

CHAPTER 2
RULES OF CRIMINAL PROCEDURE

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[New Section, Rules, and Forms]

EXPUNGEMENT

Rule 2.80 Expungement of dismissed cases or acquittals.

2.80(1) Either a defendant or a prosecuting attorney may file an application to expunge the district court criminal records of a case under Iowa Code section 901C.2 where an acquittal was entered for all criminal charges or where all criminal charges have been otherwise dismissed. The court may also expunge an eligible case on its own motion. The application may be filed by an attorney of record in the case, by an attorney who enters a limited appearance for the expungement proceedings, or by a self-represented defendant.

2.80(2) An application for expungement of a criminal case record under Iowa Code section 901C.2 shall be initiated by completing and filing an application that substantially complies with Rule 2.86—Form 1: *Application to Expunge Court Record under Iowa Code section 901C.2*.

2.80(3) The application must be filed in the case where expungement is sought and served on the county attorney. If the application is filed by a county attorney, the county attorney shall provide notice to the defendant and any counsel of record.

2.80(4) The application and all attachments shall be confidential.

2.80(5) For the purposes of this rule, a “case” refers to a separately numbered case.

2.80(6) For the purposes of this rule, “otherwise dismissed” includes a separately numbered case in which a case number becomes inactive because all charges have been transferred to another case number.

Rule 2.81 Expungement of eligible misdemeanor convictions.

2.81(1) A defendant seeking expungement of district court criminal records for an eligible misdemeanor as defined in Iowa Code section 901C.3 shall file an application. The application may be filed by an attorney of record in the case, by an attorney who enters a limited appearance for the expungement proceedings, or by a self-represented defendant.

2.81(2) An application for expungement of a misdemeanor under Iowa Code section 901C.3 shall be initiated by executing and filing an application that substantially complies with Rule 2.86—Form 2: *Application to Expunge Misdemeanor Court Records under Iowa Code section 901C.3*. An application for expungement of a misdemeanor under Iowa Code section 901C.3 must be accompanied by an official Division of Criminal Investigation Iowa criminal history record check, obtained by submitting form DCI-77 with a release authorization signature, dated within the past 30 days.

2.81(3) The application must be filed in the case where expungement is sought and served on the county attorney.

2.81(4) If the defendant seeking misdemeanor expungement has records eligible for expungement under different case numbers that arose from the same transaction or occurrence, the defendant must file a copy of the application in each case.

2.81(5) The application and all attachments shall be confidential.

Rule 2.82 Expungement of public intoxication, possession of alcohol under the legal age, and certain prostitution cases.

2.82(1) A defendant seeking expungement of district court criminal records from an eligible misdemeanor as defined in Iowa Code section 123.46, 123.47, or 725.1 shall file an application. The application may be filed by an attorney of record in the case, by an attorney who enters a limited appearance for the expungement proceedings, or by a self-represented defendant.

2.82(2) An application for expungement of a case under Iowa Code section 123.46 shall be initiated by executing and filing an application that substantially complies with Rule 2.86—Form 3: *Application to Expunge Public Intoxication Court Records under Iowa Code section 123.46*.

2.82(3) An application for expungement of a case under Iowa Code section 123.47 shall be initiated by executing and filing an application that substantially complies with Rule 2.86—Form 4: *Application to Expunge Possession of Alcohol under the Legal Age Court Records under Iowa Code section 123.47*.

2.82(4) An application for expungement of a case under Iowa Code section 725.1 shall be initiated by executing and filing an application that substantially complies with Rule 2.86—Form 5: *Application to Expunge Prostitution Court Records under Iowa Code section 725.1*.

2.82(5) The application and all attachments shall be confidential.

Rule 2.83 Expungement proceedings.

2.83(1) The county attorney may file a response to an application under rule 2.80, 2.81, or 2.82. The response shall be filed within 20 days after service of the application unless otherwise ordered by the court. The response shall be confidential.

2.83(2) The district court shall grant the expungement if, after consideration of the application, the response (if any), and any other pertinent information, it determines that the requirements for expungement have been met. The court may conduct a hearing.

2.83(3) For purposes of Iowa Code sections 901C.2(1)(a)(2) and 901C.3(1)(d), the referenced financial obligations are those obligations in the case or cases where expungement is sought. Room and board fees sought under a separate civil action pursuant to Iowa Code section 356.7 are not considered to be obligations in the case or cases where expungement is sought. Payment of court debt or other financial obligations is not a precondition for expungement under Iowa Code sections 123.46(6), 123.47(8), or 725.1(1)(c).

2.83(4) For purposes of Iowa Code section 901C.3(1)(b), any pending charge of a public offense as defined in Iowa Code section 692.1 shall be considered a pending criminal charge.

2.83(5) For purposes of Iowa Code section 901C.3(1)(c), all charges as to which a deferred judgment was granted at the same time shall be considered one deferred judgment.

Rule 2.84 When expungement is granted.

2.84(1) When expungement of a dismissal or acquittal is granted under Iowa Code section 901C.2, the court shall order that the record in that criminal case shall become a confidential record exempt from public access under Iowa Code section 22.7. The record shall be made available by the clerk of the district court, upon request and without court order, to the defendant or to an agency or person granted access to the deferred judgment docket under Iowa Code 907.4(2). The record shall not otherwise be accessible except by court order.

2.84(2) When expungement of a misdemeanor conviction is granted under Iowa Code section 901C.3, the court shall order that the record in that criminal

case shall become a confidential record exempt from public access under Iowa Code section 22.7. The record shall not be accessible except by court order.

2.84(3) When expungement of a conviction for public intoxication, possession of alcohol under legal age, or certain prostitution charges is granted under Iowa Code section 123.46, 123.47, or 725.1, the court shall order that the record in the criminal case shall become a confidential record exempt from public access under Iowa Code section 22.7. The record shall not be accessible except by court order.

2.84(4) The district court shall have jurisdiction to issue further orders as necessary to implement a grant of expungement.

2.84(5) Appellate records, other than appeals of simple misdemeanors to district court, are not subject to expungement.

Rule 2.85 Confidential record of expunged misdemeanors. In order to implement Iowa Code section 901C.3(4), the Iowa Judicial Branch shall maintain a confidential record of expunged misdemeanors. This record shall be confidential and exempt from public access under Iowa Code section 22.7. Before granting an application for expungement under Iowa Code section 901C.3, the district court shall access the record in a manner authorized by the record's designated custodian to determine whether the applicant has received a prior misdemeanor expungement. If a prior misdemeanor expungement is found, the case name, case number, and date of expungement shall be provided to the parties.

Rule 2.86 Forms